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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. ~~157~~ 41

RYAN STEVEDORING CO., INC.,

Petitioner,

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

REPLY BRIEF OF PETITIONER

SIDNEY A. SCHWARTZ
Counsel for Petitioner

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REPLY BRIEF OF PETITIONER

The brief of Pan-Atlantic Steamship Corporation in opposition to the petition herein would have this Court believe that the facts in this litigation are peculiar or unique. It is to be assumed that every respondent on the submission of a petition to this Court makes the same statement in an attempt to have the petition denied.

However, not only do the questions presented by the petitioner permeate *all* litigation (cf. *Berti* v. *Compagnie de Navigation Cyprien Fabre,* 213 F. 2d 397, 398) but they project problems to the stevedoring industry in its securing proper and adequate insurance coverage to cover the type of liability for which the petitioner has been held liable.

The brief of the National Association of Stevedores, as *amicus curiae,* an association representing 150 stevedoring firms in 39 different ports in the United States, points

up the importance to the industry of the questions presented by the petitioner.

The facts in this case which project the main question are not novel, despite the respondent's misleading protestations to the contrary. The main question which is presented respecting the construction of the Act and the right of indemnity is omnipresent in maritime personal injury litigation.

One of the questions of law that is presented to this Court is whether there can be indemnity under the general maritime law in connection with a condition allegedly created by an independent contractor upon the premises of another. Indemnity, as implied by the common law, in contrast to the general maritime law, has been allowed where a dangerous condition has been created by an independent contractor upon the premises of another.

Whether this same kind of land based indemnity, *i.e.*, implied by the common law, absent any express contract, can be granted under the general maritime law to a shipowner for the alleged creation of a dangerous condition upon his premises (a vessel) has never been determined by this Court. Indeed, the respondent cites no decision of this Court which determines this problem or points the way to decision. This is in contrast to the main brief of the petitioner which explores the entire reservoir of decisional law which points the way to decision in favor of petitioner's contentions. (See pages 22 to 25 of petitioner's brief.)

The respondent would also by oblique reference to "breach of contract" have this Court assume that there was an express contract which determined the rights and obligations in this matter although it has admitted, as it inevitably must, that there was no formal contract that existed between the parties to this litigation. There is no

contract which governs the questions that have been posed by the petitioner herein.

There is no peculiar set of facts which projects the questions presented by the petitioner. Indeed, as the U. S. Court of Appeals for the Second Circuit recently (May 26, 1954) said in *Berti* v. *Compagnie de Navigation Cyprien Fabre*, 213 F. 2d 397, 398, and which statement completely encompasses the instant litigation:

> "This appeal involves the *recurring problems* of liability of a vessel owner to an injured employee of the stevedore it has hired to load or unload the vessel and of the liability of the stevedore for indemnity to the vessel owner." (Italics supplied.)

The problem which is presented by the instant petition, relating to the construction of the U. S. Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. A. § 901 *et seq.*, as integrated with any indemnity that may be implied in law in maritime non-collision cases, has been the subject of a host of decisions. It is in no way unique, as has been shown in footnote 2 at page 8 of the petition of Ryan Stevedoring Co., Inc. However much the respondent writhes and inveighs against the petitioner's contentions respecting the wording of § 905 of 33 U. S. C. A., and however much the respondent contends that compensation is the exclusive remedy for the employee, his kin, assignees, or anyone else who claims through him (Resp. Brief, p. 9, which it has italicized) nowhere in § 905 of 33 U. S. C. A. will such language be found. Indeed, the Congressional language was all embracing for the statute reads "and *anyone* otherwise entitled to recover damages from such employer • • • ."

The questions presented by the petition are not questions *in vacuo*. They arise every day in litigation which

stems from an injury to a longshoreman aboard a vessel. That they will arise even more frequently in the future has been shown by the petitioner at page 10 of its petition and has been referred to in the dictum of the U. S. Court of Appeals for the Second Circuit in *Berti* v. *Compagnie de Navigation Cyprien Fabre*, 213 F. 2d 397. By the decision of the U. S. Court of Appeals for the Second Circuit in this and the *Berti* cases, the stevedore has become the insurer of the shipowner. The shipowner by this Court's decision in *Alaska SS Co.* v. *Petterson*, 347 U. S. 396, has become the insurer of the safety of all persons who come on board its vessel no matter how said persons are injured. *Sequitur*, the stevedore will always be called upon to indemnify the shipowner for judgments obtained against it by the stevedore's injured employees.

If the stevedore is not insulated from liability for a claim of indemnity in such a situation by reason of the very wording of § 905 of 33 U. S. C. A., then it must obtain, if it can, proper and adequate insurance protection.

The stevedore, if it is exposed to such a type of liability, must go into the open insurance market and attempt to purchase, however prohibitive the cost, coverage for liability imposed upon it by law, not contract, if it is impleaded by a shipowner who has been sued by the stevedore's injured employee. The only policy that would afford protection in such a case is a workmen's compensation employers' liability policy, properly endorsed (cf. *Cardinal* v. *State of New York*, 304 N. Y. 400).

In the instant matter the petitioner's compensation carrier* not only covered the petitioner for compensation but

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* The respondent in its brief in opposition has injected the question of insurance as though that was a consideration which should affect the granting or denial of a writ of certiorari. The insurance that is involved in this matter,

issued appropriate endorsement to cover any liability within certain financial limits, which was imposed by law (not contract), for damages on account of injuries to an employee where said employee has brought suit against another and that other brings a suit or claim against the employer. This refutes entirely the respondent's argument at pages 18 and 19 of its brief that a compensation carrier has no interest in an action of this type after it has received reimbursement of all amounts expended on behalf of the injured longshoreman. It has an interest in every instance of this kind and is vitally affected by this type of litigation.

By virtue of the limited coverage ($25,000) which is provided to the petitioner, the latter, as do all stevedoring firms with the customary limited coverage, has a major interest in the problems presented. The representation of the National Association of Stevedores in this matter by its motion for leave to be joined as an *amicus curiae* was not an idle gesture. It was manifestly prompted by the stevedoring industry's concern over the position it finds itself in by reason of the holding in this case.

It is respectfully submitted that this case and the questions presented merit the decision of this Court.

Respectfully submitted,

RYAN STEVEDORING CO., INC.

By SIDNEY A. SCHWARTZ
Counsel for Petitioner

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if it is important at all, will be discussed *infra*. As this Court well knows "substantially all maritime risks are insured" (*Keen* v. *Overseas Tankship Corp.*, 194 F. 2d 515, 518) and the petition for certiorari in this matter not only embraces the stevedoring industry but the insurance carriers who write the type of coverage involved.